

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RANDY C. WEISSERT,

Plaintiff,

Hon. Richard Alan Enslen

v.

Case No. 1:05-cv-00335

NICOLE M. COOK, et al.,

Defendants.

**REPORT AND RECOMMENDATION**

This matter was removed from the Montcalm County Circuit Court on May 11, 2005.

Defendant Brian Grill answered the complaint on May 13, 2005 (Dkt. 4). The Plaintiff entered an application for entry of default as to Defendants Nicole M. Cook and Thomas M. Phillips, who had not answered, in response to the court's Order to Show Cause (Dkt. 9), on September 6, 2005 (Dkt. 10). Default was entered on September 7, 2005. Both Nicole M. Cook and Thomas M. Phillips, appearing pro se, answered the complaint on September 8, 2005.

A Rule 16 Scheduling Conference was held on November 1, 2005, and Defendants Cook and Phillips did not appear. The entry of default against Cook and Phillips was set aside on February 10, 2006 (Dkt. 25). The matter was set for another Rule 16 Scheduling Conference on March 24, 2006, at 9:00 a.m., and a copy of the order setting Rule 16 Conference was mailed to Defendants Cook and Phillips. The mailing was not returned. Defendants Cook and Phillips again did not appear for the Rule 16 Scheduling Conference.

Therefore, the undersigned recommends that default and a default judgment be entered against Defendants Nicole M. Cook and Thomas M. Phillips pursuant to Fed. R. Civ. P. 55 as to liability and that Plaintiff be ordered to submit proof of damages by way of affidavit.

Date: April 5, 2006

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order.

*Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).